

2004
PURCHASE OF SERVICES AGREEMENT -- ADULT FAMILY HOME

I. PARTIES

This agreement is made this 1st day of January, 2004, by and between the WAUKESHA COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES, whose principal address is 500 Riverview Avenue, Waukesha, WI 53188-3632, hereinafter referred to as Purchaser, and _____, hereinafter referred to as Provider or Adult Family Home Provider.

In consideration of the mutual covenants and promises contained herein, the parties hereby agree as follows:

II. PURCHASE AND COST OF SERVICES

- A. Subject to the terms and conditions set forth in the 2004 State of Wisconsin/Waukesha County Contract covering Social Services and Community Programs, Purchaser agrees to purchase and Provider agrees to provide to eligible clients during the period from January 1, 2004, to December 31, 2004, the programs as described in the FUNDING DETAIL or Individual Agency Agreements.
- B. Provider shall not subcontract any portion of this agreement without the prior written consent of Provider, and a consent to subcontract shall not be deemed to be a consent to any subsequent subcontract. Any such subcontract without such consent shall be void, and shall, at the option of Provider, terminate this agreement. If such subcontracting does occur, Provider remains responsible for fulfillment of all terms of this agreement.
- C. The Provider agrees to provide the Purchaser with the services listed on the FUNDING DETAIL or Individual Agency Agreements. The total amount Purchaser will pay Provider for services provided in accordance with this agreement shall not exceed the total amount listed either on the FUNDING DETAIL or the total of all Individual Interagency agreements, any statutory or common law provisions to the contrary notwithstanding.
- D. Should the total dollar amount on either the FUNDING DETAIL or all Individual Interagency Agreements be greater than the costs of services actually delivered, the Purchaser shall not be liable for payments in excess of actual cost of services delivered.
- E. Payment will be made to Provider after invoice is received and within the required time limit. All services shall be invoiced once per month, after the month is completed.

III. STAFFING AND DELIVERY OF SERVICES

- A. Provider shall work in cooperation with Purchaser to determine the methods, procedures, and personnel policies to be used in initiating and furnishing services to eligible clients or patients.
- B. Purchaser shall not pay Provider unless the selected agency has a signed Purchase of Service agreement with the Purchaser for the specific service(s) and said agreement provides for sufficient funds to pay for the services.
- C. Provider shall furnish all personnel required to perform the services under this agreement. Such personnel shall not be employees of, or have any other contractual relationships with the Purchaser. Any replacement of personnel shall be by persons of like qualifications, which shall be attested to by the Provider.
- D. Whenever publicity or brochures are prepared by the Provider, it is recommended that the following statement shall be incorporated: "The service(s) have been provided, totally or in part, through funding from the Waukesha County Health and Human Services Department."

IV. PAYMENT FOR SERVICE

- A. Purchaser agrees to pay Provider for the services provided in accordance with this agreement on the basis of actual allowable costs or the amount as stated in the FUNDING DETAIL, whichever applies, as determined by Purchaser.
- B. Payment will be made to Provider after invoice is received and within the required time limit. All services shall be invoiced once per month, after the month is completed.
- C. Provider shall return to Purchaser funds paid in excess of the allowable cost of standard programs provided. If the Provider fails to return funds paid in excess of the allowable cost of any standard programs provided, Purchaser may elect to recover such funds from subsequent payments made to Provider. The allowable costs of standard programs shall be determined pursuant to the Department of Health and Social Services' Accounting Principles and Allowable Costs Policies Manual.

Should the total dollar amount on either the FUNDING DETAIL or all Individual Interagency Agreements be greater than the costs of services actually delivered, the County shall not be liable for payments in excess of actual cost of services delivered.

- D. If Provider requests an advance payment in excess of \$10,000, the Provider agrees to supply a Surety Bond per Section 46.036(3)(f), of the Wisconsin Statutes. The advance payment may be up to one-twelfth of an annual agreement. If the agreement period is for less than twelve months, the agreement amount may be adjusted in amounts no greater than the amount determined by dividing the agreement amount by the number of months in the agreement period. The Surety Bond must be for an amount equal to the amount of the advance payment applied for.
- E. Purchaser shall recover from Provider money paid in excess of the terms of this agreement or money paid for services not received or provided. Upon Purchaser's written demand for repayment, Provider shall tender the amount of repayment demanded within (30) thirty days unless other repayment terms are agreed upon in writing.

V. INDEMNITY AND INSURANCE

- A. Indemnification. Provider agrees to indemnify, hold harmless and defend Purchaser, its officers, agents and employees from any and all liability, including claims, demands, losses, costs, damages, fees, and expenses of every kind, for damages to persons or property, including, without limitation, claims arising out of State or Federal anti-discrimination laws, which either arise out of, in connection with, or occur during the course of this agreement, where such liability is founded upon or grows out of the acts or omissions of any agent or employee of the Provider. Provider agrees to indemnify Purchaser for any amount Purchaser may be required to repay to the Wisconsin Department of Health and Social Services by virtue of payments made to Provider by Purchaser under this agreement that the Department of Health and Social Services determines to be overpayments or inappropriate payments.
- B. Insurance. For purposes of this and all other Adult Family Home Purchase of Service Agreements, but only for those services rendered pursuant to the terms of such agreements, Purchaser shall keep in force and effect a commercial general liability insurance policy to protect the Provider and Purchaser. The policy will provide coverage with limits of \$1,000,000 per event and \$1,000,000 per year, which limits are applicable to the Purchaser and all Adult Family Home Providers in total and not to each Adult Family Home Provider individually. The coverage so provided to the Providers shall be subject to all terms, including exclusions, limitations, restrictions, rights and duties, as are set forth in such policy. Such coverage is intended to be excess to any other valid and collectible insurance available to the Provider.

If Provider receives any claim or legal process based on an act, error or omission related to services rendered under the terms of this agreement, or has reason to believe a demand for damages may be made, Provider shall immediately notify Purchaser and Risk Management Administrator - Department of Administration. Provider shall keep in force and effect at all times during the terms of this agreement the following insurance coverage with the minimum limits as defined below. Such insurance coverage shall be primary.

1) Homeowners' or Renters' Insurance

\$300,000 combined single limit (bodily injury and property damage)

2) Automobile Liability Insurance

- a) Comprehensive Automobile Liability or Business Auto Policy form covering all owned, hired, and non-owned private passenger autos and commercial vehicles.
- b) Split limits of \$100,000 each person, \$300,000 each occurrence, and \$50,000 property damage each occurrence, or a Combined Single Limit of \$300,000 each accident.

Upon execution of this agreement, Provider shall furnish Purchaser with a Certificate of Insurance and, upon request, certified copies of the required insurance policies.

VI. DISCRIMINATION

Affirmative Action/Civil Rights Compliance

- A. IF YOU ARE A PROVIDER WITH MORE THAN 25 EMPLOYEES AND MORE THAN \$25,000 IN CONTRACTED SERVICES IN A BUDGET YEAR, you will provide a current Subrecipient Civil Rights Compliance Action plan for Meeting Equal Opportunity Requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title VI and XVI of the Public Service Health Act, the Age Discrimination Act of 1975, the Omnibus Budget Reconciliation Act of 1981 and the Americans with Disabilities Act (ADA) of 1990. If a plan has been approved by the State of Wisconsin DHFS or DWD the letter of approval may be substituted for the actual plan. The plan may cover a 3 year period. A copy of the plan can be found at http://www.dwd.state.wi.us/dws/civil_rights/plans.htm.
- B. IF YOU ARE A PROVIDER THAT DOES NOT MEET THE ABOVE REQUIREMENTS, you will provide a current Letter of Assurance. A copy can be mailed to you upon request.
- C. The Provider agrees to the following provisions:
 - 1. No otherwise qualified person shall be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination in any manner on the basis of race, color, national origin, religion, sex, disability or age. This policy covers eligibility for and access to service delivery, and treatment in all programs and activities.
 - 2. No otherwise qualified person shall be excluded from employment, be denied the benefits of employment or otherwise be subject to discrimination in employment in any manner or term of employment on the basis of age, race, religion, color, sex, national origin, or ancestry, handicap (as defined in Section 504 and the Americans with Disabilities Act (ADA), physical condition, developmental disability (as defined in s.51.05(5)), arrest or conviction record (in keeping with s.111.32) sexual orientation, marital status, or military participation. All employees are expected to support goals and programmatic activities relating to non-discrimination in employment.
 - 3. The Provider shall post the Equal Opportunity Policy, the name of the Equal Opportunity Coordinator and the discrimination complaint process in conspicuous places available to applicants and clients of services, and applicants for employment and employees. The complaint process will be according to Purchaser's standards and made available in languages and formats understandable to applicants, clients and employees.
 - 4. The Provider agrees that through its normal selection of staff, it will employ staff with special language skills or find persons who are available within a reasonable time and who can communicate with non-English speaking clients; train staff in human relations techniques and sensitivity to cultural patterns; and making the programs and facilities accessible, as appropriate, through outstations, authorized representatives adjusted work hours, ramps, doorways, elevators, or

ground floor rooms.

- D. The Purchaser will take constructive steps to ensure compliance by the Provider with the provisions of this subsection.

VII. PROVIDER RESPONSIBILITIES

Provider agrees to comply with State, and Federal Rules and Regulations, applicable to the services covered by this agreement. Failure to comply with any part of this agreement which results in an audit exception of State funding will be reimbursed by Provider. Further, as a condition of reimbursement, Provider shall:

- A. Submit to Purchaser a monthly invoice on an invoice form approved by the Purchaser. The invoice shall be in duplicate and submitted to Purchaser no later than the tenth (10) day of the following month. The invoice must be on Provider's letterhead or invoices supplied by Purchaser, and be signed and dated by Provider's authorized representative or designee. Any fees collected on behalf of a client from any source will be treated as an adjustment to the costs and will be reported accordingly on Provider's billings; that is, the Provider shall report gross charges and gross revenues and the Purchaser will send a net payment.
- B. Submit to Purchaser by February 11, 2005 all final billings or adjustments to billings, that would be reimbursed under the terms of this agreement. No billings for 2004 will be accepted after this date. This will insure that Purchaser will be able to meet the State of Wisconsin deadlines for submission of expenses to obtain reimbursement. **Failure to obtain billing for services by this date will negate any payment terms (as provided for under Section 4).**
- C. If a Provider provides less than \$25,000 in services in a one year period, an annual financial review may be required. If a Provider provides more than \$25,000 in services in one contract year, a certified public audit may be required.
- D. If services provided by you are, in whole or part, funded by MA- waiver dollars, your signature on this contract certifies that MA-waiver funds will not be used for any room and/or board expenses.
- E. Cooperate with Purchaser on establishing costs for reimbursement purposes.
- F. Enter a client into service only with the prior authorization of Purchaser.
- G. Transfer a client from one category of care or service to another upon receipt of advance approval of Purchaser.
- H. Submit evidence of certification for the respective programs being purchased under this agreement.
- I. Notify Purchaser in writing, sixty (60) days prior to any changes in the location of the delivery the provided services, and of any major changes in the officers, management, or ownership of Provider's agency.
- J. Where applicable submit within thirty (30) days of the month's end a monthly expenditure report.
- K. Certify through signing this contract that neither Provider nor any of its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in federal assistance programs by any federal department or agency. In addition, Provider shall notify Purchaser within five business days in writing if Provider or its principals receive a designation from the federal government that they are debarred, suspended, proposed for debarment, or declared ineligible by a federal agency.

VIII. RECORDS

- A. Provider shall maintain records and financial statements as required by Purchaser, and State and

Federal rules and regulations.

- B. When requested by Purchaser, Provider shall provide statistical reports for the State's Human Services Reporting System [HSRS].
- C. Purchaser's representatives, or representatives of appropriate state or federal agencies, shall have a right of access to client, employee, financial or other records of Provider as may be necessary to evaluate or confirm Provider's rates and charges for care and service, collections and cost estimates in compliance with the specifications of this agreement.
- D. The use or disclosure by any party of any information concerning clients who receive services from Provider for any purpose not connected with the administration of Provider's or Purchaser's responsibilities under this agreement is prohibited except with the informed, written consent of the eligible client or the client's legal guardian, except as otherwise provided in the "Qualified Services Organization Agreement".

IX. CLIENT ELIGIBILITY

Provider and Purchaser understand and agree that the eligibility of individuals to receive the services to be purchased from Provider under this agreement will be determined by Purchaser. An individual is entitled to the right of a fair hearing concerning eligibility. Provider shall inform individuals of this right. Provider shall inform the client or guardian and the Purchaser in writing of a denial of eligibility. If a client requests a hearing, benefits shall continue until a decision is rendered.

X. INCORPORATION OF GRIEVANCE PROCEDURE AND OTHER PROCEDURES/DOCUMENTS

See section on Discrimination above.

XI. RESOLUTION OF DISPUTES

Provider may appeal decisions of Purchaser in accordance with Chapter 68 of the Wisconsin Statutes and the Waukesha County Code section 2- 701 thru 2-708.

XII. REVISIONS AND TERMINATIONS OF THE AGREEMENT

- A. Failure to comply with any portion of this agreement or its attachment(s) may be considered cause for revision or termination. Any breach of this agreement shall empower Purchaser to cancel said agreement.
- B. Any and all revisions of this agreement shall be agreed to by Purchaser and Provider in an Addendum, to be signed by the authorized representatives of both parties.
- C. Provider shall notify Purchaser whenever it is unable to provide the required quality or quantity of services. Upon such notification, Purchaser and Provider shall determine whether such inability will require a revision or termination of this agreement.
- D. This agreement can be terminated by a sixty (60) day written notice by either party when not in conflict with other licensing requirements.
- E. If Purchaser finds it necessary to terminate the agreement prior to the agreement expiration date for reasons other than non- performance by the Provider, actual costs incurred by the Provider may be reimbursed for an amount determined by mutual agreement of both parties.
- F. The issuance of any criminal charges against an agent or representative of the Provider, within the scope of services to be purchased in this agreement, can constitute a substantial breach of agreement

and may empower Purchaser to immediately cancel said agreement.

XIII. RENEGOTIATION

This agreement, or any part thereof, must be renegotiated in the event of: increased or decreased volume of services, changes required by federal laws, regulations or court action, fiscal funding available affecting the substance of this agreement.

XIV. BILLING AND COLLECTION PROCEDURES

Purchaser shall assume all responsibilities for billing and collection.

XV. PROHIBITED PRACTICES

- A. During the period of this agreement, Provider shall not hire, retain, or utilize for compensation, any member, officer, or employee of the Waukesha County Health and Human Services Department who represents the Purchaser, or any person, whom, to the knowledge of the Provider, has a conflict of interest. No employee of the Waukesha County Health and Human Services Department who represents the Purchaser shall be an officer, member of the Board of Directors, or have a proprietary interest in the Provider's business. Any exceptions to this term must be approved in advance by the Purchaser.
- B. Provider shall furnish Purchaser with written disclosure of any financial interest, employee relationship, professional services or consultant relationship, which any of Provider's employees, officers, board members, stockholders, or members of their immediate family may have with respect to any supplier of goods and services under this agreement.

XVI. ASSIGNMENT LIMITATION

This agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns provided, however, neither party shall assign its obligations hereunder without the prior written consent of the other.

XVII. INDEPENDENT CONTRACTOR

Nothing contained in this agreement shall constitute or be construed to create a partnership or joint venture between the Purchaser or its successors or assigns and Provider or its successors or assigns. By entering into this agreement and by acting in compliance herewith, Provider is at all times acting and performing as an independent contractor, duly authorized to perform the acts required hereunder, and in no sense shall be considered employees, agents or volunteers of the Purchaser.

XVIII. INSPECTION OF PREMISES

Provider shall allow Purchasers representatives and the representatives of any local, state or federal unit to visually inspect the Provider's premises. Inspection shall be permitted without formal notice whenever care and services are being furnished.

XIX. CONDITIONS OF THE PARTIES' OBLIGATIONS

- A. This agreement is contingent upon authorization of state and federal laws. Any material amendment or repeal of the same affecting relevant funding or authority of the Department shall serve to terminate this agreement, except as agreed to by the parties.
- B. Nothing contained in this agreement shall be construed to supersede the lawful powers or duties of either party.
- C. This agreement is subject to sufficient funding being available to Purchaser.

- D. Purchaser will make payments for this contract period only when all Insurance and other Compliance requirements have been met (or waived by the Department). Evidence of compliance with the Insurance requirement will be thru a Certificate of Insurance.
- E. Purchaser reserves the right to withdraw any recipient from the program, service, institution, or facility of Provider at any time, when in the judgement of Purchaser, it is in the best interest of Purchaser or the recipient to do so.
- F. This Agreement shall terminate on December 31, 2004, unless Purchaser provides otherwise in writing to Provider.

XX. QUALIFIED SERVICE AGREEMENT

In order to insure the provision of services to the Purchaser's clients and allow for the Purchaser to monitor those services, considering that the disclosure of this information is governed by one or more State Administrative Codes, State Statutes, Federal Regulations and/or Federal Statutes, the Service Provider and the Purchaser each agree:

- 1. To be fully bound by the governing State Code or Statute and/or Federal Regulation or Statute in receiving, storing, and otherwise dealing with any information about a client who receives services.
- 2. To institute appropriate procedures for safeguarding such information, particularly client identifying information.
- 3. Absent a lawful court order, to refuse to provide any confidential information pertaining to clients unless authorized to do so by the governing State Code or Statute and/or Federal Regulation or Statute.
- 4. To recognize that any unauthorized disclosure of client information may result in either civil and/or criminal proceedings.

XXI. HIPAA COMPLIANCE

- a. The Provider agrees to comply with the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the extent those regulations apply to the services the Provider provides or purchases with funds provided under this contract.
- b. In addition, certain functions included in this agreement may be covered within HIPAA rules. As such the Purchaser must comply with all provisions of the law and determine whether Provider is a "Business Associate" within the context of the law. If Provider is determined to be a Business Associate, they will be required to sign and return with this contract the Business Associate Agreement, which will be included and made part of this agreement. The Business Associate Agreements will be mailed in a separate mailing to Providers who have been determined to meet the definition of "Business Associate" within the context of the law.

The attached Program Description, and the funding and units of service sheet contained in each Individual Service Plan are hereby incorporated by reference in its entirety.

This instrument embodies the entire agreement of the parties. This agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date first written above.

Provider's Authorized Representative

Date

Peter Schuler, Director
Waukesha County Community Human Services

Date

***** FOR CIVIL RIGHT COMPLIANCE PURPOSES: *****

PLEASE CHECK THE APPROPRIATE BOX:

I have less than_____ more than_____ 25 full time equivalent staff.